



Montana Department of **LABOR & INDUSTRY**

Steve Bullock, Governor
Pam Bucy, Commissioner

Business Standards Division
Todd Younkin, Division Administrator

MONTANA BOARD OF OUTFITTERS

301 S. Park Avenue, 4th Floor, PO Box 200513 Helena, Montana 59620-0513

Phone: 406-841-2203 Fax: 406-841-2309

E-MAIL: dlibsout@mt.gov WEBSITE: <http://www.outfitter.mt.gov/>

FAQs

The Board of Outfitters has prepared a comprehensive list of Frequently Asked Questions FAQ because we believe that you should have as much information as possible to help you comply with Board Statute and Rule. Listed below are several frequently asked questions the Board has received over the years, categorized by topics so that you can readily find the information you seek. We are constantly adding to this list so be sure to check in often or just email us with your questions.

Licensing

The Board of Outfitters licenses outfitters, and the guides they employ or contract, strictly for hunting and fishing services. The Board does not license for any other form of recreational service provision. Upon initial application, license applications are classified as routine or nonroutine. Non-routine applications require further information gathering and perhaps Board of Outfitter approval before issuance. For that reason they require a longer time frame to process. Specific statutes governing licensing can be found at MCA 37.47.3, and accompany administrative rules can be found at ARM 24.171 Subchapters 5 & 6.

Q: If I am licensed to outfit in another state, can I retain reciprocity in Montana?

A: No, there is no instant reciprocity granted for licensure as an outfitter. An applicant may be able to obtain credit towards the experience requirement for Montana only if the documentation coming from the state in which the applicant is licensed is of sufficient detail to determine that Montana requirements are met.



Q. If I have performed guide services under a license outfitter in another state, can that experience count in meeting the guide days experience in Montana?

A. You may submit application and supporting documents subject to approval by the board and subject to all rules regarding experience requirements.

Q. How are outfitters and guides licensed in Montana?

A. The Montana Board of Outfitters (MBO), a unit of the Montana Department of Labor & Industry, sets experience, qualification, and testing requirements for licensing outfitters to provide fishing and/or hunting services (both big game and upland bird/waterfowl). Guides are sponsored by individual outfitters, then qualified by the MBO for a license.

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Year End Reporting for Outfitters

Year-end reporting requirements were substantially streamlined due to the passage of HB274 in 2013. Since then, the Board of Outfitters has amended, appealed and enacted several administrative rules to add clarity and guidance as to what is expected in year-end reporting of an outfitter. Specific reporting requirements are governed by MCA 37.47.201, and 24.171.408.

Q: Do I still need to provide addresses on client logs, and are statistics sheets still required?

A: No. The client logs have been revised and outfitters need only capture data as depicted on the forms currently available on the Board's website.



Operation Plans

Q. Am I required to send in all of my supporting documents, e.g. proof of first aid, insurance certificate, L1s, etc., with my annual operations plan update?

A. Proof of First Aid and Certificate of Insurance is required for renewal. Changes in law and rule have streamlined many other reporting requirements.

Outfitters are not required to send current L1 forms to the board. Outfitters are required to send a report detailing legal description in Township, Range, Section or aliquot parts of any private or state land as required by statute and rule. Outfitters are required to maintain current records of lease agreements in the base of operation or business and records must be made available upon request.

Operation Plans must be current including all private and public land agreements. Outfitters must maintain and provide to the board, current legal descriptions of all private land used for outfitting.

Net Client Hunter Use (NCHU)

Q. Can I apply for new NCHU from the Board, if not how do I acquire it if I need more?

A. No. The Board no longer has the legal authority to issue more NCHU. The only manner that an outfitter can acquire initial or additional NCHU is by purchasing from an existing NCHU holder. A substantially streamlined form has been developed and is available on the Board's website to request a change of record of holder of NCHU from a seller to buyer. The Board will be the official record keeper of which licensed outfitters own NCHU, under which categories and specific amounts. No authorization by the Board for transfer is required other than the requirement that the transferor/transferee license be in good standing. NCHU TRANSFER FORM

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Use of Agents, Taking Payment for and Contracting for Outfitting Services

Q. Is there a law or requirement that only the outfitter must receive payments received for hunting and fishing purposes?

A. No. While it is true that only licensed outfitters can legally provide hunting and or fishing services for remuneration, the rule is not intended to imply that they are the only individuals that can take payment on behalf of their organization. The Board recognizes that many outfitters hire agents, guides, employee, reservationists, etc., to assist in the conduct of the business, and the collection of client receipts on behalf of the outfitter's business is not considered a violation of law.

Q. Is a written contract required between outfitter and participant?

A. No. While ARM 24.171.2301 does require that the outfitter "set all contract terms and conditions with clients", it does not specifically indicate that the contract be in writing. Under common law, contracts can be and often are verbal.

Q. I am an independent contractor guide and have been able to acquire loyal clients over the years. If I want to grow my business, can I advertise to acquire more clients?

A. Not to customers directly, but a guide can advertise to potential endorsing outfitters in order to solicit more opportunities to obtain guide days. It is important for guides to recognize that under Montana Outfitter statutes and rules, only outfitters are deemed to "have" clients. While you may have serviced specific customers over several years, they are deemed clients of the outfitter that reports their service on his or her respective client logs and therefore are not the guide's clients. If a guide desires to actual "have" their own clients, they would need to become a licensed outfitter.



Q. What is an Independent Contractor?

A. Montana law defines an independent contractor as:

"an individual who renders service in the course of an occupation and: (a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact, and (b) is engaged in an independently established trade, occupation, profession, or business."

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Characteristics/history of Independent Contractor

Industry offers the following factors to consider in determining if a worker meets the definition and warrants an exemption.

The worker is not required to follow written or oral instructions concerning how the work is to be done.

The worker is not required to perform the services at certain established times.

The worker is not furnished with the facilities, tools, and materials by the hiring agent to do the work.

The worker is not paid based on the time spent doing the work, but rather is paid per job.

The working relationship may not be terminated at will without liability involved.

Factors determining part (b), 'engaged in an independently established trade, etc.

The worker can make a profit or incur a loss as a result of their work.

The worker has two or more contracts with several different hiring agents.

The worker has continuing or recurring liabilities associated with performing the services.

The worker files federal or state business tax forms.



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The worker pays all expenses associated with performing the services and is not reimbursed by the hiring agent.

The worker advertises their services in telephone books, newspapers, or other media, and obtains insurance and business licenses.

During the 2005 legislative session, Senate Bill 108 passed, increasing the fee to \$125 for two years and requiring applicants for an ICEC (independent contractor exemption certificate) to demonstrate up-front that they qualify for exemption.

For the most current exemption requirements and the new point system

Montana's Employment Relations Division Independent Contractor Central Unit

(406) 444-9029

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Q. How do I get an Independent Contractor Exemption Certificate (ICEC)?

A. Use this Independent contractor exemption certificate application to apply as a sole proprietor or contact the Independent Contractor Central Unit, (406) 444-9029, for an application. **NOTE:**

For a corporate officer or manager of a manager-managed corporation, check the FAQ "What is the 'Limited Liability Corporation' exemption from Workers' Compensation?"

The application is in three parts:

An 'application' form (a questionnaire that you **MUST** sign in front of a Notary Public - usually at your bank or credit union) outlining your business structure (most guides are Sole Proprietors), your 'profession or trade' (fishing guide), and other information.

NOTE: Line 3 of the 'application' says "I am providing documentation . . . etc

The new IC system requires you to submit proof that you operate an independent business and uses a point system to gauge whether you meet legal requirements.



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The simplest way to make sure you have the minimum number of points (15) is to send three items along with your application:

A copy of your guide or outfitter license (3 points)

A copy of your liability insurance (6 points) –

A list of your equipment (boat(s), trailer, oars, life vests, etc.) with approximate dollar value (6 points)

A waiver form of workers' compensation benefits that must be initialed at each paragraph, then signed in front of a notary.

Gather all the parts and documentation required, then send the whole bundle with the \$125 fee to:

MT Dept. Labor & Industry, Employment Relations Division Independent Contractor

Central Unit P.O. Box 8011 Helena MT 59604-8011

NOTE: It typically takes the IC Unit less than a week to issue an ICEC; in most cases, they mail out the ICEC within 2 to 3 days of receiving an application.

Q. Questions regarding process?

A. Contact 406-444-9029.

Q. What is the 'Limited Liability Corporation' exemption from Workers' Compensation?

A. Work Comp laws at 39-71-417 MCA state:

A person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

Since most guides and outfitters work away from their 'place of business', they are covered by this section of law. However, the law goes on to say:

An officer or manager who is exempt) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

An officer of a quasi-public or a private corporation or a manager of a manager-managed limited



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liability company who qualifies under one or more of the following provisions:

The officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

The officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

the officer or manager either:

Owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

Owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

The officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection.

For more information

Montana Secretary of State

(406) 444.2034

Download copies of the Limited Liability Corporation Articles of Organization



Outfitter License Requirements

Q. I am going to purchase an existing outfitting business, are there legal means by which I can accelerate meeting the experience requirements specified in Board Rule?

A. Yes. Under current Administrative Rules, candidates can seek to have days of experience waived under two methods: 1. Completion of an approved guide school program yielding 3 days of waived experience for every day of completed program to a maximum of 30-days, and up to 50-days waived of experience based on the submittal and approval of a 12-month Supervision Plan between a buyer and seller of an outfitting business, and the subsequent approved completion of the plan. These options are specifically described at ARM 24.171.502

Outfitter Assistants

The Outfitter Assistant statute and rules were promulgated to create a legal pathway for outfitters to use, on an emergency basis, an employee designated as an outfitter assistant as a temporary guide to provide services under the direct supervision of the outfitter. This emergency designation was not designed as a replacement for the utilization of a licensed guide, and in fact has many limiting features to ensure that, as a tool it cannot be abused. Outfitters must familiarize themselves with the statute at MCA 37.47.325, and accompanying Administrative Rule at ARM 24.171 .410.

Q. What if my guide or I have not received his guide's license prior to the expiration of the 15-day limit on the outfitter assistant dates of use?

A. If the routine license application was submitted within the 15-day period without deficiency in required information, then the outfitter assistant can continue to provide services until the Board has issued the respective guide license.